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FEDERAL EXECUTIVE SERVICE

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Mr. McGEE, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

[To accompany S. 1682]

The Committee on Post Office and Civil Service to which was referred the bill (S. 1682) having considered the same, reports favorably thereon with amendment and recommends that the bill as amended do pass.

PURPOSE

The purpose of S. 1682 is to establish an integrated, government-wide system embodied in a Federal Executive Service to provide a manpower-management program replacing the present fragmented and unwieldy procedures under which supergrade positions are established and appointments are made. The bill vests in the Civil Service Commission the responsibility for the direction of the new Federal Executive Service and provides for Congressional surveillance of the Commission's actions. The Federal Executive Service established by the bill is intended to provide greater consistency and flexibility in authorizing supergrade positions and in the appointment and direction of top-level Federal managers. The bill would thus relax some of the rigid constraints that now interfere with achieving effective personnel management at the supergrade level. In short, S. 1682 provides for central management of the system governing the employment of personnel paid at the rates now prevailing for supergrades—an extension of the personnel system applying to the lower levels of Federal service but separate from it. The bill provides the Executive branch greater latitude to meet urgent needs through the establishment of new positions, but retains essential controls needed to keep the upper-level grade structure from becoming inflated.

The bill, as amended by the Committee, with some major exceptions explained below under "Major Amendments," adheres in large part to the administration bill as introduced. For the sake of clarity, however, the Committee has stricken all after the enacting clause of S. 1682 as introduced and has substituted for that language a clean bill.

BACKGROUND

The bill will initially cover approximately 7,000 positions which come within the purview of the Civil Service Commission.

The authorities to make appointments to fill these positions are statutory, having been enacted over a number of years by special legislation responding to needs indicated at the time of enactment by public policy. The result has been an accretion of supergrade authorizations, some according broad supervisory powers to the Commission, others vesting in the Commission only the authority to review qualifications but in some cases allowing agency heads to decide whether the agency actually needs the position. The result has been a patchwork system, under which the Commission, as the Government's central personnel agency, bears heavy responsibility but wields insufficient authority.

Of the 7,000 positions covered, 2,754 so-called quota positions are authorized to the agencies by the Civil Service Commission from a pool of spaces established by law for such allocation.

Approximately 1,950 positions may be filled by the agencies with Commission authorization without regard to quotas. These are non-quota scientific and professional positions.

Additionally, approximately 1,100 positions are authorized by direct legislation under which a stipulated number of executive positions is authorized specifically for a certain agency by the Congress.

Finally, the picture is further beclouded by Public Law (sometimes called Public Law 313-type) authorities originally intended for scientific positions. These special authorities were enacted to permit the employment of candidates with scientific talent outside the rigidities of the classified service. An employee hired under a Public Law authority is not given a position in the General Schedule, but is paid at any point within a salary range. Over the years Congress has authorized Public Law positions for specific agencies. The majority, but not all, of these authorities place the authorized Public Law positions in the competitive service but provide that appointment to the positions shall be made without competitive examination upon approval of the appointee's qualifications by the Commission.

While the Public Law authorities are generally thought of as scientific-type positions, two of the authorities—those for HEW and NASA—permit the use of these authorities for administrative positions as well. There are currently some 1,230 Public Law positions which are compensated within the supergrade pay range: 800 in the competitive service and 430 in the non-competitive service.

The supergrades grew out the need to augment the Classification Act of 1923 which provided for the establishment of positions through Grade GS-15. In 1947, the Congress provided 45 positions of a scientific type to be paid above the rate for GS-15. These are the Public Law positions, and during the next two years the number of authorizations for them increased by one-third. In 1949, the Congress, in estab-

lishing a General Schedule classification system, added grades GS-16, -17, and -18. The number of positions in the supergrades was limited to 400, and the Civil Service Commission was given the responsibility for allocating these positions to the agencies according to need. By 1951 the Public Law positions had undergone a 50 percent growth and the 500 quota positions at grade GS-16, -17, and -18 remained stable.

In that year, the Congress authorized, as a part of the Independent Offices Appropriation Act of fiscal year 1952, 11 positions at grade GS-16, -17, and -18 specifically for the use of the General Accounting Office. This action was precedent-setting, for since then the granting by Congress of special agency authorities to establish supergrade positions has snowballed, increasing a thousand-fold, until today such special authorities constitute almost one-sixth of all supergrade spaces.

The Federal Government's activity in the field of science and engineering, as a matter of public policy, began increasing substantially in the year 1963. In that year, the Congress authorized the Federal agencies to appoint scientists and engineers at the supergrade level without numerical limitation. These are the so-called non-quota authorities. They have increased more than 900 percent during the nine years of their existence, and today they account for more than one-fourth of all supergrade positions. The Civil Service Commission passes upon the qualifications of candidates for the non-quota spaces and evaluates the spaces to determine the grade level appropriate to the duties assigned but has no authority to determine how many such jobs an agency should have. The non-quota authority has the potential for unbridled growth, and it favors scientific programs over other programs of equal national importance.

Each of the authorities described above operates under a different set of legislative and regulatory requirements. The Commission is responsible for the management of fewer than 40 percent of the total number of positions at the supergrade level, and the Congress has no means of supervising the assignment of the numbers of positions, of determining how they are managed, or of assuring equity among agencies. Agency authorizations for supergrade appointments emanating from different Congressional Committees present substantial problems. Since the authorizations stem from different sources, the relative needs of the different agencies cannot be given equal consideration. Thus programs of equal importance may be treated differently. Further, when position designations are written into law, flexibility is lost, since when program priorities change, agency management is unable to use old position authorities to achieve new goals; and some positions inevitably persist long after the need for them has disappeared.

A chronic complaint about the current supergrade program is that the Civil Service Commission is unable to accommodate emergency needs from the pool of 2,754 spaces and, according to spokesmen for some agencies, is unable to allocate sufficient executive spaces even for ordinary, day-to-day operations. Executive spaces appear to be in short supply while the non-quota scientific spaces are plentiful. This has resulted in charges that some agencies have utilized non-quota scientific appointees in executive or managerial positions in contravention of the intent of the law.

The legislative history shows that Congress has endeavored to meet the needs of the Executive Branch. But it has frequently done so on an *ad hoc*, agency-by-agency, basis without regard to the impact of

the specific action on the total system. It was this same lack of system which led to the Classification Act of 1923.

The various actions by the Congress, however, clearly show the need for a structure of executive positions immediately below the Presidential appointee level. But growth of the structure has been without plan, so that what exists today is sufficiently complex as to make public explanation extremely difficult.

A means must be found to make an orderly allocation of executive level positions to agencies upon the basis of the size and complexity of agency programs; and then of determining how the jobs are to be filled. At present there is no satisfactorily explainable method of doing either.

In practice, executive level positions are assigned to the agencies by the Civil Service Commission out of its authorized pool of super-grades, by Congressional action, and by the establishment of non-quota scientific spaces. Under such an arrangement no one can really "mind the store" and assure that inequities do not occur. Central responsibility for the administration of the system as it exists today is non-existent. Under the varying authorities the same holds true with respect to filling positions. Some are exempt by law from the purview of the Civil Service Commission; others require Commission approval.

The complexity of the system taxes the ingenuity of the professional personnel technicians who must work with it. It is even more baffling to the head of the agency who must be briefed on the intricacies of establishing and filling positions important to the successful conduct of the programs he must administer.

PROVISIONS OF THE BILL

Appointment Authority and Establishment of Priorities

The bill establishes a Federal Executive Service for all covered positions under a single authority and provides that each agency covered would submit to the Civil Service Commission an annual request for the total number of executives it needs. The agency request would be based on budget and program activity, current staffing level, the anticipated agency program activity, the agency's budget request, and the level of work to be done. The request would summarize an annual agency revaluation of its Federal executive requirements.

The request would include a statement of the number of executives required to be appointed by career appointments and non-career appointments. The bill provides that, throughout government, not less than 75% of the executives would be career executives but, with a single agency, the Commission could authorize career-non-career percentages most appropriate to the needs of the agency.

The Commission would then authorize the agency to appoint a specific number of executives, and would authorize career-non-career percentages.

The bill provides that the number of executive appointments and the percentages authorized in any agency during the year in which they are effective could be adjusted for emergency purposes by the Commission. Such an adjustment could not enlarge the Federal Executive Service by more than 1 percent in a fiscal year. This provision allows for increased executive manpower in a specific agency should program priorities change during the fiscal year.

Career and Non-Career Appointments

Under S. 1682, a career appointment would be made on the basis of merit and fitness and would be appropriate for an executive committed to a career in the Federal Service.

A non-career appointment would be made on the basis of political agreement, program philosophy, or personal confidence; or it would be made for project or other limited service not entailing long-term career commitment.

A career executive under the bill would serve no probationary period and would be given a career appointment in the competitive service, thus acquiring competitive status. His initial appointment would be made following a prescribed recruiting effort on the part of the agency and the approval of his fitness by a Commission Qualifications Board.

A non-career appointee in the Federal Executive Service would not be in the competitive service, would acquire no competitive status, would not have a fixed tenure, and would serve at the will of the appointing authority. He would initially be appointed after the Commission had determined that he possessed appropriate experience and training.

In 1953, an Executive Order of the President established three types of non-career positions known as Schedules A, B, and C. Schedules A and B cover certain positions for which it is "not practicable"—in many instances impossible—to provide an examination under which candidates can compete. Schedule C positions involve policy-making functions or require a confidential relationship with a Presidential appointee. (In 1967, Schedule C positions in the supergrades acquired the name "non-career executive assignment", and the definition of the duties involved was expanded to include "controversial political advocacy".) Incumbents of these positions, having no career Civil Service status, serve at the pleasure of the head of the agency.

In addition to these three types of excepted positions, there are also a variety of positions excluded by law from the competitive service. The Civil Service Commission advises that approximately one-half of the total non-career positions at the supergrade level have been excluded from the competitive service by legislative action. These excepted positions have been created among others, for such agencies as the Central Intelligence Agency, the National Security Agency, the Tennessee Valley Authority, and the Atomic Energy Commission.

The bill provides that a career incumbent in grade GS-16, -17, or -18 would automatically be converted to a Federal Executive Service career position at one of 11 pay rates that is not less than his supergrade compensation on the effective date of the Act. A supergrade incumbent having a "non-career executive assignment", *i.e.*, a Schedule C type of supergrade incumbent, would similarly be converted to a non-career Federal Executive Service position on the effective date. No recruiting effort or Qualifications Board review would be required in the conversion of career supergrade incumbents; and in the case of "non-career executive assignment" personnel converted into non-career Federal Executive Service positions, Commission review of qualifications would not be required.

A serious deficiency in the present system stems from the fact that, because of the haphazard exigencies of the current multiple appointment authorities, some appointees under Schedules A and B and the

Public Laws, while serving in the excepted service, are not in fact non-career employees. Many of them are attorneys, Public Law scientists and executives, and other professional people who have long-term careers to which they are committed to continuing.

Conversion to Career and Non-Career Positions

One of the purposes of the bill is to bring order out of the current career-non-career disorder; to insure that employees serving in career positions serve under career appointments; and to insure that non-career appointees, who do not need and should not have the protections accorded employees in the competitive service, serve under non-career appointments. The rights and protections statutorially provided career Federal employees should be strictly limited to those who entered the Federal service through competitive examinations. If a line is not clearly drawn between these two types of employees, the merit system could be seriously vitiated.

Accordingly, the bill provides that, at the option of the head of the agency, certain Schedule A and B and Public Law supergrade incumbents may be blanketed in to career positions in the Federal Executive Service on the effective date of the Act. Such an incumbent must have served at least two years in his supergrade position, his future service must be Government-oriented, and he must meet the merit-and-fitness criterion. For employees blanketed in to the career FES, no Qualifications Board review would be required.

Approximately 8 percent of the approximately 7,000 supergrades covered by the bill are incumbents of Non-career Executive Assignment (Schedule C) positions. This 8 percent would be grandfathered into the Federal Executive Service with non-career appointments.

Approximately 17 percent of the total supergrade positions are in Schedule A or B or hold appointments under Public Law authority. The Commission estimates that two-thirds of the Schedule A and B and Public Law employees would be blanketed into the career service, leaving approximately 6 percent as non-career executives. (In the future, this percentage is expected to level off at 4 percent.)

These percentages (8 plus 6) show that 14 percent of present supergrades would enter the non-career Executive Service. In time, this percentage would increase by another 12 percent. This increase is based on Commission estimates that approximately 25 percent of the present career appointments are persons who entered Government service as so-called in-and-out executives or those who have completed one career and entered Government late in life or are employees appointed for short-term projects who have remained after the specific project was completed. Upon their resignation or retirement, one-half of these positions will revert to non-career status. Thus the non-career percentage will eventually increase to an estimated 25 percent of total Federal Executive Service executives.

The bill provides that non-career Federal Executive Service appointments would be limited to the 25 percent which currently prevails among supergrades. In establishing this maximum, the Committee took into account the fact that before an excepted position may be established other than by law, the position must be approved as appropriate for the excepted service by the Commission. The Committee believes that the Commission regards as a major part of its

personnel management responsibility the careful supervision of the excepted service and has been diligent in protecting the competitive service from an escalation in the total number of positions excepted. There is no law, however, which would prevent such escalation in the future. Thus, the Committee deems it appropriate to apply a statutory limitation to the total number of excepted positions which may be created.

The Committee recognizes that the percentage figures cited above are estimates at best and that the percentage of non-career executives will not need to approach the 25-percent maximum for several years. The 25-percent maximum is provided, however, to discourage a distortion of the merit system which can result when candidates who are not truly career-oriented are given career appointments. For example, if a short-term non-career executive is urgently needed to do a specific and important job, and no non-career authority is available under which he can be appointed, experience shows that quasi-legal ways can be found to circumvent the examining procedure so that the candidate is appointed "competitively" to a career position. This practice works in opposition to the merit principle of the competitive service, weakening it and eroding the base on which it is built. The Committee believes it desirable not to put unreasonable limits on the non-career appointment authority provided by the bill and to rely upon the good judgment of the Commission to allow non-career appointments to approach 25 percent. Incompetents and the unqualified would be barred by the bill's requirements that the Commission review the qualifications of each non-career candidate. Nevertheless, the Committee adjures the Commission to keep noncareer appointments to as low a percentage of the total as good administration warrants.

Qualifications Boards

The bill provides that career executives would be broadly recruited and selected on the basis of merit, capability, and fitness. After a candidate is selected by an agency for a career appointment in the Federal Executive Service, his name and his qualifications and a documentation of the recruitment and selection process (including the names and qualifications of others who were given serious consideration for the appointment) would be submitted to a Qualifications Board established by the Civil Service Commission. The Qualifications Board, acting as an arm of the Commission, would be composed of specialists both from within and outside the Government who are qualified in the same general occupational field as that of the candidate. The Qualifications Board would approve the proposed appointment only after making a determination that merit principles were adhered to in both the recruitment and selection process and that the proposed appointee were qualified for the responsibilities of the executive level.

Once an individual became a career member of the Federal Executive Service, he could move within his agency and could accept positions in other agencies without again having his qualifications submitted to a Qualifications Board, so long as he did not have a break in service exceeding one year. Career executives would have all the tenure rights of other career employees.

The review by the Qualifications Board would provide an openness to entry into the Federal Executive Service which would insure compliance with merit principles.

Career Executive Employment Conditions

A career executive would be eligible for training in career-development programs to enhance his proficiency and promote the welfare of the agency in which he is employed. He could not have his pay reduced as long as he were in the Federal Executive Service or be separated as an executive except for cause or disability. He would be authorized to resign, transfer outside the Federal Executive Service, transfer within the Federal Executive Service to another agency or apply for optional or disability retirement and, if eligible, retire. He would be required to accept any assignment at any geographical location unless the reassignment would result in undue personal hardship. If this were the case, and the agency had no further need for his service as an executive at the place of employment, he would be offered a GS-15 position for which he were qualified.

The bill provides that a career executive may be separated from the service as a career executive through a reduction in force, and directs the Commission to prescribe regulations to include career executives in the reduction-in-force procedure.

Coverage

In general, the bill covers the Executive branch of the Government and excludes the Legislative and Judicial branches. Specifically excluded are the General Accounting Office, the United States Postal Service, the Federal Reserve System, a United States attorney or assistant United States attorney in the Department of Justice, certain positions in the Executive office of the President, a Foreign Service information officer in the United States Information Agency, hearing examiners, an employee in the Foreign Service of the United States, certain employees of the Department of Medicine and Surgery of the Veterans' Administration, and temporarily or intermittently employed experts and consultants.

Agencies Excluded by the President

In addition to these exceptions, the bill provides that any agency may apply to the Commission for exclusion from the Federal Executive Service. The Commission would review the application and the reasons advanced by the agency for exclusion and investigate as it deems advisable whether the agency should be excluded. Upon receipt of the Commission's recommendations with regard to an agency's request, the President could make an exclusion if he deemed it appropriate. The bill further provides that a component of an agency may follow the same procedure and be excluded only if the President determines that the exclusion is required for national-security reasons. It is the Committee's belief that since there are valid and unresolved questions whether certain agencies should be excluded under law, there is good reason to allow the decision to be made in the Executive branch by the President after receiving advice from the Federal Government's chief personnel agency. The language of the bill relating to the exclusion of a component of an agency would allow the President to exclude, if he deemed it appropriate, such agency components as the Federal Bureau of Investigation and the National Security Agency. The Committee construes a "component" to be a separate organizational entity such as a section, office, bureau, or department.

Commission Report

The bill provides that the Commission would make to the Congress an annual report on the Federal Executive Service prior to April 1 of each year, including comprehensive information on each agency in which the Federal Executive Service is operating and on the Government-wide operation of the Service. The report would include the current number of Federal Executive Service appointments; the projected number to be authorized in the next fiscal year; the current percentages of career and non-career Federal Executive Service appointments; exceptions to the average pay rate limitations provided by the bill and the reasons for them; and the name and biography of each individual appointed during the preceding fiscal year as a career or non-career executive.

In the case of an agency or a component of an agency excluded from the Federal Executive Service by the President (except those excluded for national-security reasons), the report would include the current authorized number of employees at pay rates received by Federal Executive Service personnel and the projected number for the next fiscal year.

The Congress would have 90 days in which to review the report and modify the reports' requirements by law if it disagreed.

Under the bill, the Congress would no longer be required to authorize additional supergrade type positions, this function being assumed by the Commission. In the past, the Commission has come to the Committees on Post Office and Civil Service of the Senate and the House to request needed additions to the pool of supergrade positions under the government-wide quota. When such additions have been requested, it has been difficult for the Committees to assess the merits of the requests, since the Congress has neither first-hand knowledge of the needs and requirements of the individual agencies nor detailed substantive knowledge of program emphasis within the Executive branch. Members of the Committees have been aware that, while they are authorizing 150 or 200 or 75 additional supergrade spaces, it has been possible for other supergrade spaces to be added through the non-quota provisions of law without any recourse whatsoever to legislative action. The Committee believes that the designation of the Commission—which has daily working arrangements with the Federal agencies in personnel matters—to serve as responsible arbiter of all Federal Executive Service position numbers and their allocation to the departments and agencies which would provide a more effective management of supergrade authorities and allocations than now exists.

Pay

S. 1682 eliminates grades GS-16, -17, and -18 as such and establishes a Federal Executive Service under which executives are paid at the rates now prevailing for supergrades—from \$29,678 to \$39,693 (presently subject to a \$36,000 ceiling). This arrangement follows the flexible pay system of the present Public Law positions, in which individual compensation can be set at a point within a range in accordance with position responsibility and the qualifications of the executive. Grades GS-16, -17, and -18 under the General Schedule have set salaries for a number of levels within each level. Movement from one level to another within a GS grade is based principally on length of service at a particular level.

The Public Law system has been in use for more than 20 years and, according to the Civil Service Commission, has proved to be better suited to the requirements of top-level manpower than a rigid system of grades. Under the bill, the agency would establish the compensation of an executive at any one of 11 ungraded pay rates and could increase it at any time. Compensation would be based on the value of the executive to the agency, his duties and responsibilities, and his performance. An executive not otherwise promoted would be advanced to the next higher pay rate at the completion of each three years of service.

The bill provides that the average rate of pay of all executives in career appointments with an agency and the average rate of pay of all executives in non-career appointments in an agency may not exceed the fifth highest rate of the 11 authorized pay rates. This provision prevents overall salary escalation or higher Federal Executive Service salary averages in certain agencies as opposed to others, and it ensures that non-career appointees do not drift to the top of the pay scale.

Executive Management Outside the Federal Executive Service

To encourage Government-wide uniformity in the management of executive manpower, the bill provides that agencies or components excluded from coverage by the President would establish programs of executive management within the agency as nearly like the Federal Executive Service as conditions of good management warrant. Such excluded executives would be paid according to the pay system prescribed for the Federal Executive Service. Agencies with employees excluded by the President for reasons other than national security would be required annually to obtain authorizations of executive strength from the Civil Service Commission in the same manner as is provided for agencies covered by the Federal Executive Service. Certain other groups specifically excluded in the bill are encouraged to adopt features of the Federal Executive Service. Agencies outside the executive branch would be required to compensate executive employees at one of the eleven rates established for the Federal Executive Service.

Effective Dates

The provision of the bill for the Presidential exclusion of certain agencies and components from the Federal Executive Service would be effective on the date of enactment.

The provisions of the bill requiring a report by the Commission to the Congress, the request by the included agencies for authorization from the Commission to make executive appointments, and the requests of excluded agencies from the Commission to make executive appointments would be effective on January 1, 1973.

All other provisions of the bill would become effective July 1, 1973.

MAJOR AMENDMENTS

Exclusions

The Committee is strongly of the opinion that, to the extent feasible, there should be a single personnel system in the Executive Branch applicable to jobs of equivalent level. This has not been the case for many years because certain agencies, or components thereof, have been permitted by law to have their own systems without regard to the Civil Service law and rules. The Committee believes that in general such

legislated exceptions do not permit the executives the flexibility required to administer the total personnel program and update it as conditions change.

S. 1682, as introduced, would have perpetuated such exceptions by excluding from the Federal Executive Service a number of agencies or components of agencies. The Committee rejected much of this part of the bill, not because it did not recognize the possibility that some differences in system may be required in some cases, but rather because the justification of the proposal tended to consist of reasons for maintaining the status quo rather than a substantive identification of true differences requiring unlike treatment. The Committee has serious reservations whether the reasons which prevailed when the agencies or components of agencies were excepted from Civil Service law and rules still prevail.

At the same time, the Committee was not in possession of sufficient facts upon which to base a judgment whether such agencies should be included or excluded. The Committee believes that the merits of proceeding with the legislation without delay outweighed the merits of delaying it for study of the circumstances surrounding the relatively small number of positions excluded.

However, rather than perpetuate or compound the inflexibilities of the present system by writing into law the exclusion of the positions from coverage by the Federal Executive Service, the Committee has amended the bill to provide for the establishment of a procedure whereby such determinations may be made by the President after investigation and recommendation by the Commission. Under the Committee bill, the number of exclusions could change from time to time but the Committee hopes that, through this process, the number will be reduced.

The Committee realizes that the separate systems prevailing for executive-level positions in agencies excepted from the Civil Service laws is symptomatic of a larger problem, since these positions represent only a small percentage of the spaces in some agencies. Therefore, the Chairman of the Civil Service Commission has been requested by letter to study the current circumstances pertaining to the various agencies or components of agencies and report his findings to the Committee by July 1, 1973.

Agreement

Under the Administration bill as introduced, each career appointment in the Federal Executive Service would be based upon a three-year contract between the employee and the appointing agency, setting forth major conditions of employment. At the conclusion of the three years, the agreement could be terminated or renewed at the discretion of the agency. If the agency chose not to renew the agreement, the employee could return to a position in grade GS-15 unless he were eligible for optional retirement, in which case the agency could require him to retire.

The Committee rejected this provision of the bill because it was not persuaded of the necessity for such a revolutionary modification of the tenure of career employees. Indeed, the virtues of the proposal seemed to be exceeded by its vices. The case for change appeared to rest upon the concept that there are large numbers of career executives who, locked into their positions by Civil Service status, have

grown "fat and comfortable" and unresponsive to dynamic leadership as programs and conditions change; and that managers or heads of agencies are unable to take corrective action. In the Committee's view there was little tangible evidence presented on this point. The difficulty of shoring up such an assumption with statistics is recognized. Nevertheless, adoption of such a drastic departure from the traditional concepts of granting stability of tenure to those whose quality of service has merited their promotion to the executive level of an organization would require unshakeable justification.

The Committee believes that when supergrade employees give the appearance of foot-dragging, unresponsiveness, or lack of energy and motivation, poor management is often a contributing factor and that the Executive branch has the tools with which to manage the Executive Service and eliminate those whose performance does not measure up to required standards.

The Committee was particularly concerned with the provision of the agreement plan which would have permitted the agency to retire an employee eligible for optional retirement at the conclusion of his agreement. The following illustration dramatizes the inequity that such a provision could produce.

An employee could be recruited from outside the Federal Service into a career executive position and at the conclusion of his agreement, even though he had only three years of service, would be guaranteed a grade GS-15 position where he could presumably remain until age 70.

A career effective at 55 years of age with 30 years of service would have no such guarantee but could be forced to retire. In another case, a career executive at age 55 with 29 years of service could return to a GS-15 where he could presumably remain until age 70.

The public has a right to expect competence, integrity and the energetic pursuit of assigned responsibilities on the part of its career executives. The fact that the Committee has rejected this proposal should not lead to a belief on the part of any career executive that with position and tenure go the right to give less than the best of which he is capable. The head of an agency has both the right and responsibility to remove from executive positions those who do not meet reasonable standards of performance, regardless of length of service. Nevertheless, the Committee is not persuaded that a supergrade employee is entitled to lesser tenure rights than those of other employees subordinate to him.

Authority to Administer

The Committee believes that if the Federal Executive Service is to succeed, it must be administered by the Government's central personnel agency—the Civil Service Commission. The bill as introduced made provision for collaboration between the Commission and the Office of Management and Budget on such matters as the ratio of career to non-career executives. The Chairman of the Civil Service Commission or his representatives are, of course, free at any time to consult with the Director of the Office of Management and Budget, but the Committee views with some concern the intrusion of that Office into substantive business, unrelated to budgetary matters, of Departments and agencies; and rejects the proposal that Civil Service Commission-Office of Management and Budget collaboration be required by law. The Committee believes that this could result in diffused lines of

authority and to confusion in both the Federal agencies and in the public mind. The bill has therefore been amended to hold the Commission solely accountable under the President for such central leadership and decisions as are essential to the administration of the Federal Executive Service.

Biographies

S. 1682 has been amended by the Committee to add a provision to require that the annual report to Congress include a biography for the five years immediately preceding the date of appointment, of each person appointed to the Federal Executive Service during the preceding fiscal year.

The Committee believes that the quality of Government service depends in large measure upon the quality of the persons recruited to provide leadership to the many programs. The Committee believes that this requirement of public disclosure of appointees' qualifications will provide continuing emphasis to the Congress' interest on this point. Excluded from these requirements are appointments to certain medical, engineering, and research positions.

Pay

In the area of pay, the bill as introduced gave the agencies complete latitude to pay an executive any annual salary not less than the sixth step of GS-16, nor more than the rate for level V of the Executive Salary Schedule. The Committee has amended the bill to provide 11 specified pay rates covering the same range, with the agency having the authority to determine which of the specified rates it would use. The Committee also amended the bill to provide for automatic pay increments each three years to an executive who has not received a pay raise for any cause within the three-year period except a pay raise resulting from a statutory change in basic pay rates. The administration bill proposed to prevent agencies from paying the maximum to all executives by having the Commission establish a government-wide average annually, not allowing any agency to exceed it without special authorization from the Commission. The Committee believes this principle to be sound, but has amended the bill to achieve the desired control by requiring that the average pay of all career executives and non-career executives in an agency may each not exceed the fifth highest of the specified pay rates without prior approval of the Commission. This amendment, the Committee believes, will both simplify the maintenance of control and, at the same time, prevent non-career executives from receiving favored treatment.

Commission Approval of Non-Career Executives

The administration bill as introduced gave exclusive authority to the head of an agency to determine the qualifications of non-career employees. The Committee agrees with the concept of permitting administrative latitude in filling a percentage of the positions with persons whose political or program philosophy meets the desires of the administration. However, since the bill provided no restraints on which positions should be so filled, the Committee believes that the public needs greater protection to assure that non-career appointees possess the appropriate experience and training of the proper level to qualify them for the positions to which appointed. This can best be achieved by requiring the Commission to approve the qualifications prior to appointment.

SECTIONAL ANALYSIS

The first section of the bill provides that the Act may be cited as the "Federal Executive Service Act." Section 2 (2) of the bill amends section 1308 of title 5, U. S. Code, by the addition of a new subsection after subsection (e).

The new subsection provides that the Civil Service Commission shall make an annual report to Congress on the Federal Executive Service after April 1 of each year. The report shall include the current authorized number of appointments in the Federal Executive Service and the projected number in the next fiscal year; the current and projected percentages of career and non-career appointments; any adjustments in the percentages authorized by the bill and the reasons for the adjustments; any authorized exceptions to the average pay limitation and the reasons therefor; the name and biography of each individual appointed as a career or non-career executive, excluding those engaged in certain professional engineering and scientific duties; other information on the Federal Executive Service program considered appropriate by the Commission; the current authorized number of individuals in agencies or components of agencies excluded from the Federal Executive Service by the President if the individuals are compensated at Federal Executive Service level pay rates; the projected number of such appointments for the next fiscal year.

The new subsection provides that the projected number of total appointments in the Federal Executive Service, the projected percentages of career and non-career appointments, any exceptions to the average pay rate limitation, and the projected number of appointments by Executive Schedule agencies or components are effective on the July 1 which occurs after the submission of the report of that year.

Section 2 (3) adds a new subchapter II (which includes sections 3131-3141) for insertion after section 3110 of title 5.

Purpose

Section 3131 states the purpose of the new subchapter—to establish and provide for a Federal Executive Service to ensure that the executive management of the government of the United States is of the highest quality and responsive to the needs of the Nation.

Definitions

Section 3132 defines the word agency as meaning an executive agency, a military department, and the government of the District of Columbia. Not included in the definition are the General Accounting Office, the United States Postal Service, the Federal Reserve System, or any agency or component of an agency excluded from the Federal Executive Service by the President as authorized by section 3133 of the bill.

"Executive" is defined as excluding a United States Attorney or an Assistant United States Attorney of the Department of Justice; an employee paid from appropriations for the Executive Office of the President under the heading "Special Projects" or from funds appropriated to the President under the heading "Emergency Fund for the President" by the Treasury, Post Office, and Executive Appropriation Act, 1971, or later statute making appropriations for the same

purpose; a Foreign Service information officer in the USIA; a hearing examiner; an employee in the Foreign Service; an employee of the Department of Medicine and Surgery of the Veterans Administration; and an expert or consultant.

The Federal Executive Service

Section 3133 defines the Federal Executive Service as executives the Commission authorizes agencies to appoint as members of the FES. It provides that an agency may file with the Civil Service Commission an application stating why it or one of its components should be excluded from the Federal Executive Service. The Commission shall investigate and recommend to the President whether the agency or component should be excluded. The President may exclude such an agency, and he may exclude a component of any such agency only if he determines that the action is for national-security reasons.

Section 3134 provides that each agency shall submit to the Commission its executive manpower needs (both career and non-career), along with a written request for authority to appoint a specific number of executives. The section provides the criteria on which the request shall be based. Within the Federal Executive Service, not less than 75 percent of the executives shall be career executives, but within a single agency the Commission may authorize a percentage variation appropriate to the needs of the agency. The Commission shall authorize the appointment of a specific number of executives in the agency and specific percentages of career and non-career executives in the agency. The section provides that the number of appointments and the percentages authorized in any agency may be adjusted by the Commission during the fiscal year in which they are effective only for emergency purposes, and that the adjustment in total numbers may not enlarge the Federal Executive Service by more than 1% in a fiscal year. The Commission shall justify the adjustment in its subsequent report to the Congress.

Authority to Appoint

Section 3135 provides that the head of an agency may appoint an executive for either a career or non-career appointment. A career appointment is made on the basis of merit and fitness whose future service is Government-oriented. A non-career appointment is made on the basis of political agreement, program philosophy, or personal confidence or for service that does not involve career commitment. A career executive is in the competitive service, acquires competitive status by his appointment and, if he is a preference eligible, is entitled to the benefits authorized for preference eligibles. A non-career appointment may be made if the Commission determines that the appointee is qualified. A non-career executive is not in the competitive service, does not have a fixed tenure, and serves at the will of the appointing authority.

Career Appointments

Section 3136 provides that agencies shall recruit and select candidates for career appointment on the basis of merit, capability, and fitness. The Commission will assist agencies in recruiting and selecting career candidates to ensure that high-quality candidates are considered

and that recruitment is carried out broadly, extending to qualified individuals within and outside the Civil Service. The name of a career candidate must be passed upon by a Civil Service Commission Qualifications Board established under section 3138, except that Qualifications Board approval is not necessary when the appointment is by transfer from another career appointment in the Federal Executive Service or is made within one year after the expiration of, or the separation of an executive from, a previous career appointment.

Career Executive Employment Conditions

Section 3137 provides that an executive with a career appointment shall be assigned only to duties within the scope and purpose of the Federal Executive Service; be provided or participate in appropriate training and career development; not have his pay reduced as long as he is an executive; not be separated from the executive service except for cause or because of a finding that he has become disabled; be entitled to resign, transfer outside the Federal Executive Service, transfer within the Federal Executive Service to another agency, or apply for optional or disability retirement and, if eligible, be separated.

The career executive shall accept an assignment at any geographical location, except that if such an assignment should result in undue personal hardship and the agency has no further need for his services at the place of employment, the agency shall offer him a GS-15 position at the place of employment for which he is qualified. If the executive accepts the offer, this section describes how his annual rate of pay shall be determined.

If the executive declines the offer of his agency, he is, if otherwise eligible, entitled to an involuntary-separation annuity or to severance pay.

Section 3137 provides that a career executive may be separated from service through a reduction in force. The Commission shall prescribe regulations to include such an executive in a reduction-in-force action.

Qualifications Boards

Section 3138 provides that the Commission shall establish Qualifications Boards to review the qualifications of candidates for career appointments and the scope and nature of the recruitment effort. Each qualifications board shall be composed of experts appointed both from within and outside the Civil Service.

Pay

Section 3139 provides that an agency may fix the pay of an executive at any one of the following pay rates: \$29,678, \$30,667, \$31,656, \$32,645, \$33,634, \$34,623, \$35,612, \$36,625, \$37,770, \$38,915, or \$39,693. Each pay rate shall be increased automatically by the same percentage that the sixth rate of GS-15 is increased statutorily, but no executive shall be paid at a rate higher than the rate for a level V of the Executive Schedule. Section 3139 provides that a Federal Executive Service pay rate may be adjusted to a higher rate at any time, depending upon the value of the executive to the agency, his duties and responsibility, and his performance. However, the average pay rate of all executives with career appointments within an agency and the average pay rate of all executives with non-career appointments within an agency may each

not exceed the fifth highest pay rate except with the prior approval of the Commission. The Commission must determine that special executive staffing circumstances justify a higher average. This section describes how the average rate of pay of career and non-career appointees shall be determined and provides that each agency shall report to the Commission the pay rates of its executives, so that the Commission may determine whether the agency is complying with the provisions of section 3139. The section provides that an executive's pay shall move up the pay scale one step after the completion of 156 calendar weeks of service if the executive did not receive an equivalent increase in pay from any cause during this period.

Executive Management Outside the Federal Executive Service

Section 3141 provides that the head of an agency, or a component of an agency excluded from the Federal Executive Service under section 3133(b) (that is, agencies and components excluded by the President), shall establish for his agency or component a program of executive management as like the Federal Executive Service as conditions of good administration warrants. Pay for individuals appointed under such programs shall be the same as Federal Executive Service pay.

Agencies so excluded, except agencies excluded for national security reasons, shall request of the Civil Service Commission numbers of Federal Executive Service-type employees to be paid under section 3139 (a). The Commission, after reviewing the agency request, shall authorize the appointment of a specific number of such employees for the agency. The number of these appointments may not be adjusted by more than 1 percent in a fiscal year.

With regard to a component of an agency excluded for national security reasons, the agency is authorized to pay the same number of employees of the component serving in GS-16, 17 or 18 as were on the rolls immediately prior to the effective date of this section. The section provides that the Commission, on request, shall give advice and assistance to the head of each agency establishing such programs of executive management.

Each hearing examiner appointed to a position not under the General Schedule is entitled to pay prescribed by the Civil Service Commission. This pay shall be fixed at a rate that is not less than the sixth rate of GS-15 nor more than the rate for level V of the Executive Schedule.

Each agency which has employees excluded by section 3132(2) (that is, excluded by the definition of "executive") is encouraged to adopt features of the Federal Executive Service as conditions of good administration may warrant and is entitled to receive Civil Service Commission assistance.

This section provides that agencies may fix the rate of pay of employees at GS-16, 17, or 18 at one of the Federal Executive Service pay rates which is not less than the rate he is receiving immediately prior to the effective date but may pay them after that date at the new rate.

This section provides that an employee who immediately before the effective date of this act was serving under a career or career-conditional appointment in a position in the competitive service in GS-16, 17, or 18 or whose pay was fixed between the first rate of GS-16 and 18 inclusive shall receive a career appointment in the Federal Executive Service in his agency without the approval of his appointment by a

Qualifications Board. An employee who immediately before the effective date was serving in GS-16, 17, or 18 in a Schedule-C type of appointment is entitled to a non-career appointment in the Federal Executive Service with no review of his qualifications by the Commission.

An employee in grade GS-16, 17, or 18 appointed under a Schedule A or B authority or under a Public Law authority may be given a career appointment in the Federal Executive Service without Qualification Board review:

1. If the head of his agency determines that he meets merit and fitness criteria and that his future is Government-oriented; and
2. If the employee has served continuously in his position for at least two years immediately prior to the effective date of the Act; or

the employee is entitled to a non-career FES appointment without a Commission review of his experience and training.

Each agency excluded from the Federal Executive Service by the President shall, after the effective date, offer grade GS-16, 17, or 18 or the equivalent employees an appointment under the executive management program of that agency or component and pay them at Federal Executive Service rates.

This section provides that, with certain exceptions, this Act shall take effect on July 1, 1973. Paragraph (2) of the first section of this Act relating to the report of the Civil Service Commission and those provisions relating to reports of each agency establishing programs of executive management are effective on January 1, 1973.

Section 3133(b) relating to the exclusion of agencies and components thereof from the Federal Executive Service is effective on the date of enactment.

COST

No direct cost would be incurred by the enactment of this bill.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in *italic*):

TITLE 5, UNITED STATES CODE

* * * * *

§ 1305. Hearing examiners

For the purpose of sections 3105, *3141(c)*, 3344, 4301(2)(E), 5362, and 7521 of this title and the provisions of section 5335(a)(B) of this title that relate to hearing examiners, the Civil Service Commission may investigate, require reports by agencies, issue reports, including an annual report to Congress, prescribe regulations, appoint advisory committees as necessary, recommend legislation, subpoena witnesses and records, and pay witness fees as established for the courts of the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 402, amended Pub. L. 90-83, § 1(3), Sept. 11, 1967, 81 Stat. 196.)

* * * * *

§ 1308. Annual reports

(a) The Civil Service Commission shall make an annual report to the President for transmittal to Congress. The report shall include—

(1) a statement of the Commission's actions in the administration of the competitive service, the rules and regulations and exceptions thereto in force, the reasons for exceptions to the rules, the practical effects of the rules and regulations, and any recommendations for the more effectual accomplishment of the purposes of the provisions of this title that relate to the administration of the competitive service;

(b) The Commission shall report annually to the President for transmittal to Congress on the administration of chapter 41 of this title, including the information received by the Commission from the agencies under section 4113(b) (2) and (3) of this title.

* * * * *

(c) The Commission shall report annually to Congress on the operation of chapter 89 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 402, amended Pub. L. 91-93, § 104, Oct. 20, 1969, 81 Stat. 138.)

“(f)(1) The Commission shall make an annual ship report to Congress on the Federal Executive Service. The report shall be submitted before April 1 of each year and shall include comprehensive information for each agency in which members of the Federal Executive Service are serving and for the Government-wide operation of the Service showing—

“(A) the current authorized number of appointments in the Federal Executive Service and the projected number of such appointments to be authorized in the next fiscal year;

“(B) the current authorized percentages of career and noncareer appointments in the Federal Executive Service and the projected percentages to be authorized in the next fiscal year;

“(C) any adjustment in the number of such appointments or the percentages made under section 3134(e) of this title with the reasons therefor; and

“(D) any exceptions to the average pay rate limitation of section 3139(b) of this title approved by the Commission under such section with the reasons therefor;

“(E) the name and biography, for the 5 years preceding the date of appointment, of each individual appointed during the preceding fiscal year as a career or noncareer executive under sections 3135 and 3136 of this title (other than each such individual performing professional, engineering duties primarily concerned with research and development or professional, physical, or natural science or professional, medical duties); and

“(F) such other information on the overall program for the management of the Federal Executive Service as the Commission considers appropriate.

In the case of any agency or component thereof excluded from the Federal Executive Service by the President under section 3133(b) of this title (other than an agency or component excluded from that service for reasons of security of the United States), the report shall also include the current authorized number of individuals of such excluded agency or component making appointments at pay rates received by executives and the projected number of such appointments to be authorized in the next fiscal year.

"(2) The projected number of appointments in the Federal Executive Service, the projected percentages of career and noncareer appointments, any exceptions to the average pay rate limitation, and the projected number of such appointments by each excluded agency or component reported under paragraph (1) of this subsection are effective on that July 1 which occurs after the submission of the report for that year."

* * * * *

Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

"SUBCHAPTER I—EMPLOYMENT AUTHORITIES

Sec.

- 3101. General authority to employ.
- 3102. Employment of readers for blind employees.
- 3103. Employment at seat of Government only for services rendered.
- 3104. Employment of specially qualified scientific and professional personnel. **]**
- 3105. Appointment of hearing examiners.
- 3106. Employment of attorneys; restrictions.
- 3107. Employment of publicity experts; restrictions.
- 3108. Employment of detective agencies; restrictions.
- 3109. Employment of experts and consultants; temporary or intermittent.
- 3110. Employment of relatives; restrictions.

"SUBCHAPTER II—THE FEDERAL EXECUTIVE SERVICE

- "3131. Purpose.
- "3132. Definitions.
- "3133. The Federal Executive Service.
- "3134. Authorization of executive appointment and *percentages*.
- "3135. General authority to appoint executives; characteristics of career and noncareer appointments.
- "3136. Career appointments.
- "3137. *Career executive employment conditions*.
- "3138. Qualification Boards.
- "3139. Pay
- 3140. Regulations.
- 3141. *Executive management outside the Federal Executive Service.*";

§ 3101. General authority to employ

Each Executive agency, military department, and the government of the District of Columbia may employ such number of employees of the various classes recognized by chapter 51 of this title as Congress may appropriate for from year to year. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 414.)

§ 3102. Employment of readers for blind employees

(a) For the purpose of this section—

(1) "agency" means—

- (A) an Executive agency;
- (B) the Library of Congress; and
- (C) the government of the District of Columbia;

(2) "head of each agency" means the Commissioner of the District of Columbia with respect to the government of the District of Columbia.

(3) "blind employee" means an individual employed by an agency who establishes, to the satisfaction of the appropriate authority of the agency concerned and under regulations of the head of that agency, that he has an impairment of sight, either permanent or temporary, which is so severe or disabling that the employment of a reading assistant or assistants for that individual is necessary or desirable to enable him properly to perform his work; and

(4) "nonprofit organization" means an organization determined by the Secretary of the Treasury to be an organization described by section 501(c) of title 26 which is exempt from taxation under section 501(a) of title 26.

(b) The head of each agency may employ a reading assistant or assistants for a blind employee of his agency, to serve without pay from the agency, without regard to—

(1) the provisions of this title governing appointment in the competitive service; and

(2) chapter 51 and subchapter III of chapter 53 of this title. A reading assistant so employed may be paid and receive pay for his services as reading assistant by and from the blind employee or a nonprofit organization, without regard to section 209 of title 18.

(c) This section may not be held or considered to prevent or limit in any way the assignment to a blind employee by an agency of clerical or secretarial assistance, at the expense of the agency and under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 414, amended Pub. L. 90-623, § 1(3), Oct. 22, 1968, 82 Stat. 1312.)

§ 3103. Employment at seat of Government only for services rendered

An individual may be employed in the civil service in an Executive department at the seat of Government only for services actually rendered in connection with and for the purposes of the appropriation from which he is paid. An individual who violates this section shall be removed from the service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 415.)

§ 3104. Employment of specially qualified scientific and professional personnel

(a) The head of an agency named below may establish scientific or professional positions to carry out the research and development functions of his agency which require the services of specially qualified personnel within the following limits:

(1) Department of the Interior—not more than 8.

(2) Department of Agriculture—not more than 20.

(3) Department of Health, Education, and Welfare—not more than 13.

(4) Department of Commerce—not more than 30, of which at least 5 are for the United States Patent Office in its examining and related activities.

(5) Repealed. (Pub. L. 91-375, § 6(c)(5), Aug. 12, 1970, 8 Stat. 776.)

(6) United States Arms Control and Disarmament Agency—not more than 14.

(7) Library of Congress—not more than 8.

(8) National Aeronautics and Space Administration—not more than 12.

(b) When a general appropriation statute authorizes an agency named by this section to establish and fix the pay of scientific or professional positions similar to those authorized by this section, the number of positions authorized by this section is reduced by the number of positions authorized by the appropriation statute, unless otherwise specifically provided. This subsection does not apply to the National Aeronautics and Space Administration.

(c) The head of each agency authorized to establish and fix the pay of positions under this section and section 5361 of this title shall submit to Congress not later than December 31 of each year (or in the case of the Administrator of the National Aeronautics and Space Administration not later than February 1 of each year), a report setting forth—

(1) the number of these positions established in his agency during that calendar year (or in the case of the National Aeronautics and Space Administration during the previous calendar year); and

(2) the name, rate of pay, and description of the qualifications of each incumbent, together with a statement of the functions performed by each.

When the head of such an agency considers full public report on these items detrimental to the national security, he may omit the items from his annual report and, instead, present the information in executive session of such committee of a House of Congress as the presiding officer thereof may designate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 415, amended Pub. L. 90-83, § 1(7), Sept. 11, 1967, 81 Stat. 196; Pub. L. 91-375, § 6(c)(5), Aug. 12, 1970, 84 Stat. 776.)

§ 3105. Appointment of hearing examiners

Each agency shall appoint as many hearing examiners as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Hearing examiners shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as hearing examiners. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 415.)

* * * * *

§ 3109. Employment of experts and consultants; temporary or intermittent

(a) For the purpose of this section—

(1) “agency” has the meaning given it by section 5721 of this title; and

(2) “appropriation” includes funds made available by statute under section 849 of title 31.

(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

- (1) the provisions of this title governing appointment in the competitive service;
- (2) chapter 51 and subchapter III of chapter 53 of this title; and
- (3) section 5 of title 41, except in the case of stenographic reporting services by an organization.

However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section [5332] 3139 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 416.)

§ 3110. Employment of relatives; restrictions

(a) For the purpose of this section—

(1) “agency” means—

- (A) an Executive agency;
- (B) an office, agency, or other establishment in the legislative branch;
- (C) an office, agency, or other establishment in the judicial branch; and
- (D) the government of the District of Columbia;

(2) “public official” means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement, in connection with employment in an agency; and

(3) “relative” means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

(d) The Civil Service Commission may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

(e) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under section 3317(a) of this title will result in the selection for appointment of an individual who is not a preference eligible. (Added Pub. L. 90-206, § 221(a), Dec. 16, 1967, 81 Stat. 640.)

"SUBCHAPTER 11—THE FEDERAL EXECUTIVE SERVICE

"§ 3131. Purpose

"It is the purpose of this subchapter to establish and provide for a Federal Executive Service in order to insure that the executive management of the Government of the United States is of the highest quality and is responsive to the needs, policies, and goals of the Nation it serves.

"§ 3132. Definitions

"For the purpose of this subchapter, except section 3141—

"(1) 'agency' means—

"(A) an Executive agency;

"(B) a military department; and

"(C) the government of the District of Columbia;

but does not include—

"(i) the General Accounting Office;

"(ii) the United States Postal Service;

"(iii) the Federal Reserve System; or

"(iv) any agency or component thereof excluded from the Federal Executive Service by the President under section 3133(b) of this title; and

"(2) 'executive' means an employee of an agency whose pay is fixed under section 3139 of this title and not under the General Schedule in section 5332(a) of this title nor under the Executive Schedule in subchapter II of chapter 53 of this title, but does not include—

"(A) a United States Attorney or Assistant United States Attorney in the Department of Justice;

"(B) an employee paid from—

"(i) appropriations for the Executive Office of the President under the heading 'Special Projects'; or

"(ii) funds appropriated to the President under the heading 'Emergency Fund for the President' by the Treasury, Post Office, and Executive Office Appropriation Act, 1971, or a later statute making appropriations for the same purpose;

"(C) a Foreign Service information officer in the United States Information Agency;

"(D) a hearing examiner appointed under section 3105 of this title;

"(E) an employee in the Foreign Service of the United States paid under chapter 41 of title 22;

"(F) a physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans' Administration, paid under chapter 73 of title 38; or

"(G) an expert or consultant employed temporarily or intermittently under section 3109 of this title.

"§ 3133. The Federal Executive Service

"(a) *The Federal Executive Service consists of the executives the Civil Service Commission authorizes agencies to appoint under section 3134 of this title. The executives the Commission authorizes agencies to appoint under section 3134 are members of the Federal Executive Service.*

"(b) *An agency may file with the Commission an application, with reasons, that it, or a component of that agency, be excluded from the Federal Executive Service. The Commission shall review the application and reasons and undertake such other investigation as it considers appropriate to determine whether the agency or component should be excluded. Upon completion of its review and investigation, the Commission shall recommend to the President whether the agency or component should be so excluded. The agency or component shall be excluded upon written determination by the President, and a copy of such determination shall be filed with the Commission. A component of an agency may be excluded under this subsection only if the President determines that such exclusion is required for reasons of the security of the United States.*

"§ 3134. Authorization of executive appointments and percentages

"(a) *Each agency shall examine its executive manpower needs and submit to the Civil Service Commission, in accordance with regulation prescribed by the Commission, a written request for authority to appoint a specific number of executives in the agency. A request shall be based on the following factors:*

- "(1) *the current level of budget and program activity in the agency;*
- "(2) *the current level of executive staffing in the agency;*
- "(3) *the anticipated agency program activity and agency budget requests;*
- "(4) *pending legislation;*
- "(5) *the level of work to be done in the agency; and*
- "(6) *such other factors as may be prescribed from time to time by the Commission.*

"(b) *The request required by subsection (a) of this section shall state the number of executives requested which the agency desires to appoint by career appointments and by noncareer appointments. Within the entire Federal Executive Service not less than 75 percent of the executives shall be career executives. However, within a single agency, and subject to the Government-wide restrictions, the Commission may authorize a percentage of career executives most appropriate to the needs of the agency.*

"(c) *The request required by subsection (a) of this section shall be submitted annually at such time and in such form as the Commission prescribes.*

"(d) *The Commission, subject to section 1308(f) of this title, shall authorize—*

- "(1) *the appointment of a specific number of executives in the agency; and*
- "(2) *specific percentages of career executive and noncareer executives in the agency.*

"(e) *The number of executive appointments and the percentages authorized in any agency under subsection (d) of this section may be adjusted by the Commission during the fiscal year in which they are effective only for emergency purposes that were not anticipated when they were au-*

thorized. An adjustment in the number of executive appointments under this subsection may not enlarge the Federal Executive Service by more than 1 percent in a fiscal year. If an adjustment is made under this subsection, the Commission shall include information justifying the adjustment in the next annual report required under section 1308(f) (1) of this title.

"§ 3135. General authority to appoint executives; characteristics of career and noncareer appointments

"(a) Within the percentages established by the Civil Service Commission for an agency, the head of the agency may appoint an executive by either a career or a noncareer appointment. The decision whether an appointment will be career or noncareer is exclusively that of the head of the agency based on the following considerations:

"(1) A career appointment is made on the basis of merit and fitness under section 3136 of this title and is appropriate for the executive whose future service is Government-oriented.

"(2) A noncareer appointment is (A) made on the basis of political agreement, program philosophy, or personal confidence, or (B) made for project service that does not entail a long-term career commitment.

"(b) An executive given a career appointment under section 3136 of this title does not serve a probationary or trial period. An executive given a career appointment—

"(1) is in the competitive service;

"(2) acquires a competitive status by that appointment; and

"(3) if he is a preference eligible as defined by section 2108(3) of this title, is entitled to the benefits of subchapter II of chapter 75 and section 7701 of this title without the completion of a probationary or trial period.

"(c) The head of an agency may appoint an individual as an executive with a noncareer appointment if the Commission determines that such individual possesses appropriate experience and training for the duties he is to perform as an executive. An executive given a noncareer appointment—

"(1) is not in the competitive service;

"(2) does not acquire a competitive status by that appointment;

"(3) does not have a fixed tenure; and

"(4) serves at the will of the appointing authority without a continued employment guarantee.

"§ 3136. Career appointments

"(a) Each agency shall recruit and select candidates for career appointments in the Federal Executive Service on the basis of merit, capability, and fitness. The Civil Service Commission shall assist each agency in recruiting and selecting candidates for career appointment to insure—

"(1) that candidates of high quality having the best talent available are considered; and

"(2) that recruitment is carried out on as broad a base as is reasonable and extends to qualified individuals both within and outside the civil service.

"(b) When an agency selects a candidate for career appointment, the name of the candidate together with documentation of his qualifications and of the recruitment effort made shall be submitted to a Qualifications Board established under section 3138 of this title. Except as provided in

subsection (c) of this section, an agency may make a career appointment in the Federal Executive Service only with the prior approval of a Qualifications Board.

"(c) An agency may make a career appointment in the Federal Executive Service without the prior approval of a Qualification Board when the appointment—

"(1) is by transfer from another career appointment in the Federal Executive Service; or

"(2) made within one year after the expiration of, or the separation of an executive from, a previous career appointment.

§ 3137. Career executive employment conditions

"(a) An executive with a career appointment shall—

"(1) be assigned only to duties and responsibilities properly within the scope and purpose of the Federal Executive Service;

"(2) be provided with and participate in such training and career development activities as will enhance the proficiency of the executive and promote the program needs of the agency;

"(3) not have his pay reduced as long as he is an executive;

"(4) be separated from service as an executive, except for such cause as will promote the efficiency of the service, on the basis of a finding by the Civil Service Commission under section 8337 of this title that he has become disabled, or as otherwise provided in subsection (b) or (c) of this section;

"(5) be entitled to resign from the agency, transfer to employment not within the Federal Executive Service, transfer to another appointment in the Federal Executive Service in another agency, or make application for optional retirement under section 8336 of this title or disability retirement under section 8337 and, if eligible therefor, be separated, and

"(6) except as otherwise provided in subsection (b) of this section, to accept any assignment of duties and responsibilities, at any geographical location, that is properly within the scope, and consistent with the purposes, of the Federal Executive Service.

"(b)(1) If the reassignment of an executive with a career appointment to a different geographical location would result in undue personal hardship and the agency has no further need for his services as an executive at the place of employment, the agency shall offer him a GS-15 position, at the place of employment, in the competitive service for which he is qualified and which may be filled without displacing or reducing in grade any employee in the agency serving in a GS-15 position. If the executive accepts the offer, previous service in GS-15 not used for step increase purposes and all service as a member of the Federal Executive Service is creditable service and shall be used in determining the step of GS-15 into which he is entitled to be placed. However, if the rate of annual pay he last received as an executive is greater than the basic pay determined under this paragraph, he is entitled to basic pay in GS-15 at the annual rate of basic pay he was receiving as such an executive (including any increase equivalent to any statutory increase in the minimum rate of pay provided by section 3139(a) of this title, for a period of two years from the effective date of his appointment at grade GS-15, so long as he—

"(A) continues in the same agency without a break in service of one workday or more;

"(B) is not entitled to a higher rate of basic pay by operation of subchapter III of chapter 53 of this title; and

"(C) is not demoted or reassigned (i) for personal cause, (ii) at his request, or (iii) in a reduction in force caused by lack of funds or curtailment of work.

"(2) If the executive declines an offer of his agency, he is, if otherwise eligible, entitled to an annuity as the result of an involuntary separation under subchapter III of chapter 83 of this title or to severance pay under section 5595 of this title.

"(c) A career executive may be separated from service as a career executive through reduction in force. The Commission shall prescribe regulations for the release of competing career executives, to the extent applicable, in accordance with section 3502 of this title. Any career executive so separated is, if otherwise eligible, entitled to an annuity as the result of an involuntary separation under subchapter III of chapter 83 of this title or to severance pay under section 5595 of this title.

"§ 3138. Qualifications Boards

"(a) The Civil Service Commission shall establish Qualifications Boards which, acting as agents of the Commission, shall review the qualifications of candidates for career appointment in the Federal Executive Service and the scope and nature of the recruitment effort made to locate the candidates. A Qualifications Board may approve a candidate for career appointment only when the Board determines that the recruitment effort was consistent with the principles in section 3136(a) of this title, and that the candidate is one of the most highly qualified candidates considered.

"(b) Each Qualifications Board shall be composed of highly qualified experts with the ability to judge the qualifications of the candidates reviewed. The Commission may appoint the members of a Qualifications Board from individuals both within and outside the civil service. A member who is an employee of an Executive agency other than the Commission may serve on a reimbursable detail under section 686 of title 31. A member selected from a State or territory or political subdivision thereof, or from the private sector, serves as an expert or consultant and his service may be obtained under section 3109 of this title at a rate of pay not in excess of the daily equivalent that may be paid an executive under section 3139 of this title. The Commission may reimburse the government of the District of Columbia for the services of a member employed by that government.

"§ 3139. Pay

"(a) (1) Subject to paragraph (2) of this subsection, an agency may fix the pay of an executive at any one of the following pay rates: \$29,678, \$30,667, \$31,656, \$32,645, \$33,634, \$34,623, \$35,612, \$36,625, \$37,770, \$38,915, or \$39,693. Each such pay rate shall be increased automatically by the same percentage that the sixth rate of GS-15 is increased by or under statute, and such increased pay rates shall be effective on the same day that the increased sixth rate of GS-15 is effective. Commencing on such effective date, each executive shall be paid at one of those pay rates as increased. An executive appointed prior to such effective date shall be paid, commencing on such effective date, at the corresponding pay rate in effect on and after such date.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, an executive shall not be paid at a rate higher than the rate for level V of the Executive Schedule.

"(b) An agency shall establish the initial rate of pay for each executive, and adjust that rate to a higher rate authorized under this section at any time, in accordance with such factors as—

"(1) the value of the executive to the agency;

"(2) the duties and responsibilities of the executive; and

"(3) the performance of the executive.

However, the average rate of pay of all executives with career appointments within an agency and such average rate of all executives with non-career appointments within such agency may each not exceed the fifth highest pay rate in effect under subsection (a) of this section, except with the prior approval of the Commission and when the Commission determines that special executive staffing circumstances justify a higher average rate of pay for executives with career or noncareer appointments, as the case may be, of that agency. In determining the average rate of pay of all executives with career and noncareer appointments within an agency, the rate of pay of each executive shall be the pay rate fixed and in effect under subsection (a)(1) of this section and not the rate paid the executive as the result of subsection (a)(2) of this section, and any advances in pay under subsection (c) of this section shall be excluded in determining the pay rate of such executive. Each agency shall report to the Commission the pay rates of the executives of that agency so that the Commission may determine whether the agency is complying with this section.

"(c) An executive shall be advanced in pay successively to the next higher pay rate in effect under subsection (a)(1) of this section at the beginning of the next pay period following the completion of each 156 calendar weeks of service at any such pay rate if the executive did not receive an equivalent increase in pay from any cause during that period. An increase in pay granted an executive under subsection (a) of this section is not an equivalent increase in pay within the meaning of this subsection.

"§ 3140. Regulations

"The Civil Service Commission may prescribe regulations necessary to carry out the purposes of this subchapter, except to the extent otherwise provided in section 3141 of this title.

"§ 3141. Executive management outside the Federal Executive Service

"(a)(1) In the case of an agency or component thereof excluded from the Federal Executive Service under section 3133(b) of this title, the head of that agency shall prescribe regulations which establish within that agency or component a program of executive management as nearly like the program prescribed under this subchapter for the Federal Executive Service as conditions of good administration warrant. Any such program shall provide that individuals appointed under the program shall have their pay fixed and paid in accordance with section 3139(a) of this title and shall be advanced in pay in accordance with section 3139(c) of this title.

"(2) (A) Any such agency or component thereof so excluded, unless excluded for reasons of security of the United States, shall submit to the Civil Service Commission a written request to appoint a specific number of employees in the agency to be paid at rates in effect under section 3139(a) of this title. The request shall be based on the factors referred to in section 3134(a) of this title. The request shall be submitted annually at such time and in such form as the Commission prescribes.

"(B) The Commission, after reviewing the agency request, shall authorize the appointment of a specific number of such employees for the agency. The number of such appointments may be adjusted by the Commission during the fiscal year in which they are effective only for emergency purposes that were not anticipated when they were authorized. An adjustment in such number for an agency may not enlarge the number by more than 1 percent in a fiscal year. The Commission shall include information about any such adjustment in the next annual report required under section 1308(f) (1) of this title.

"(3) On and after the effective date of this section, in the case of any such component of an agency excluded for reasons of security of the United States, the agency is authorized to fix the pay of, and pay, at those pay rates in effect under section 3139(a) of this title, the number of employees of the component, which does not exceed the number of employees of the component serving in GS-16, 17, or 18, being paid at a rate of GS-16, 17, or 18, or whose pay was being fixed by administrative action between the first rate of GS-16 and the rate for GS-18, immediately prior to such effective date.

"(b) The Commission, on request, shall give advice and assistance to the head of each agency establishing a program of executive management under subsection (a) of this section. The assistance given by the Commission under this subsection may include the use of a Qualifications Board established under section 3138 of this title and the use of the executive inventory maintained in the Commission.

"(c)(1) Each hearing examiner appointed under section 3105 of this title to a position not under the General Schedule in section 5332 of this title is entitled to pay prescribed by the Commission independently of agency recommendations or ratings in accordance with this subsection.

"(2) The Commission shall fix the pay of a hearing examiner paid under this subsection at a rate that is not less than the sixth rate for GS-15 nor more than the rate for level V of the Executive Schedule.

"(3) The Commission shall prescribe regulations necessary to carry out this subsection which shall include—

"(A) the bases for determining the rate of pay for each hearing examiner position based on the difficulty and responsibility of work in keeping with the purpose expressed in section 5101 of this title; and

"(B) provisions governing the rate for new appointments, the rate on change in position or type of appointment, periodic increases, and pay saving which shall be consistent with sections 5105, 5106, 5333, 5334, 5335, and 5337 of this title.

"(d) Each agency which has employees excluded by section 3132(2) of this title—

"(1) is encouraged to adopt such features on the program prescribed under this subchapter as conditions of good administration warrant; and

"(2) is entitled, on request, to receive advice and assistance from the Commission under subsection (b) of this section.

"(e) Each agency of the executive and legislative branches of the Government of the United States, the Administrative Office of the United States Courts, the Federal Judicial Center (with respect to secretarial and clerical positions), and the United States Tax Court (other than an agency included under section 3132(1) of this title, an agency or component thereof excluded under section 3133(b) of this title, and any office, agency, or establishment referred to in section 2107 of this title) having immediately prior to the effective date of this section an employee serving in GS-16, 17, or 18, who was paid at a rate of GS-16, 17, or 18, or whose pay was fixed by administrative action between the first rate of GS-16 and the rate of GS-18, shall, on and after such date, fix the pay of each such employee at one of the pay rates in effect under section 3139(a) of this title which is not less than the rate he is receiving immediately prior to such date. On and after the effective date of this section, such agency, the Administrative Office, the Center (with respect to such positions), and the Tax Court are each authorized to fix the pay of, and pay, in accordance with such section 3139(a), that number of employees of the agency, the Administrative Office, the Center (with respect to such positions), and the Tax Court, as the case may be, which does not exceed the greater of the number of positions authorized to be filled or of its number of its employees serving in GS-16, 17, or 18 being paid at a rate of GS-16, 17, or 18, or whose pay was being fixed by administrative action between the first rate of GS-16 and the rate for GS-18, immediately prior to such effective date."

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

Sec.

3301. Civil service; generally.

* * * * *

§3324. Appointments at GS-16, 17, and 18.

§3325. Appointments to scientific and professional positions.】

* * * * *

§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) necessary exceptions of positions from the competitive service; [and]

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3306(a)(1), 3321, 7152, 7153, 7321, and 7322 of this title. Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules【.】; and

(3) necessary exceptions from sections 2951, 3304, 3305, 3306, 3308, 3309, 3311, 3313, 3314, 3315, 3315a, 3316, 3317, 3318, 3320, 3321, 3322, 3341, and 3361 to carry out subchapter II of chapter 31 of this title.

§ 3324. Appointments at GS-16, 17, and 18

(a) An appointment to a position in GS-16, 17, or 18 may be made only on approval of the qualifications of the proposed appointee by the Civil Service Commission. This section does not apply to a position—

- (1) provided for in section 5108(c)(2) of this title;
- (2) to which appointment is made by the President;
- (3) to which appointment is made by the Librarian of Congress;

or

- (4) the incumbent of which is paid from—

(A) appropriations for the Executive Office of the President under the heading "The White House Office" "Special Projects", "Council of Economic Advisers", "National Security Council", or "Office of Emergency Planning"; or

(B) funds appropriated to the President under the heading "Emergency Fund for the President" by the Treasury, Post Office, and Executive Office Appropriation Act, 1966, or a later statute making appropriations for the same purpose.

(b) The Commission may prescribe regulations necessary for the administration of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422, amended Pub. L. 90-83, § 1(10), Sept. 11, 1967, 81 Stat. 197.)

§ 3325. Appointments to scientific and professional positions

(a) Positions established under section 3104 of this title are in the competitive service. However, appointments to the positions are made without competitive examination on approval of the qualifications of the proposed appointee by the Civil Service Commission or its designee for this purpose.

(b) This section does not apply to positions established under section 3104(a)(7) of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 423)

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CHAPTER 43—PERFORMANCE RATING

Sec.

4301. Definitions.
4302. Performance-rating plans; establishment of.
4303. Performance-rating plans; requirements for.
4304. Ratings for performance.
4305. Review of ratings.
4306. Performance-rating plans; inspection of.
4307. Other rating procedures prohibited.
4308. Regulations.

§ 4301. Definitions

For the purpose of this chapter—

- (1) "agency" means—
 - (A) an Executive agency;
 - (B) the Administrative Office of the United States Courts;
 - (C) the Library of Congress;
 - (D) the Botanic Garden;
 - (E) the Government Printing Office; and

- (F) the government of the District of Columbia;
but does not include—
- (i) the Tennessee Valley Authority;
 - (ii) Repealed. Pub. L. 91-375, § 6(c)(8), Aug. 12, 1970, 84 Stat. 776;
 - (iii) the Forcing Service of the United States;
 - (iv) the Atomic Energy Commission;
 - (v) the Central Intelligence Agency;
 - (vi) the National Security Agency; or
 - (vii) a Government controlled coporation; and
- (2) "employee" means an individual employed in or under an agency, but does not include—
- (A) a physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans' Administration, whose pay is fixed under chapter 73 of title 38;
 - (B) an employee outside the continental United States who is paid in accordance with local native prevailing wage rates for the area in which employed;
 - (C) a civilian officer or member of a crew of a vessel operated by the Department of the Army or the Department of the Navy;
 - (D) an individual employed by the government of the District of Columbia whose pay is not fixed under chapter 51 and subchapter III of chapter 53 of this title; **[or]**
 - (E) a hearing examiner appointed under section 3105 of this title **[.]**; or
- "(F) a member of the Federal Executive Service or an employee under an agency program of executive management established under section 3141(a) of this title."*

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Subpart D—Pay and Allowances

CHAPTER 51—CLASSIFICATION

- Sec.
- 5101. Purpose.
 - 5102. Definitions; application.
 - 5103. Determination of applicability.
 - 5104. Basis for grading positions.
 - 5105. Standards for classification of positions.
 - 5106. Basis for classifying positions.
 - 5107. Classification of positions.
 - [5108. Classification of positions at GS-16, 17, and 18.]**
 - 5109. Positions classified by statute.
 - 5110. Review of classification of positions.
 - 5111. Revocation and restoration of authority to classify positions.
 - 5112. General authority of the Civil Service Commission.
 - 5113. Classification records.
 - [5114. Reports; positions in GS-16, 17, and 18.]**
 - 5115. Regulations.

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§ 5102. Definitions; application

(a) For the purpose of this chapter—

(1) “agency” means—

- (A) an Executive agency;
- (B) the Administrative Office of the United States Courts;
- (C) the Library of Congress;
- (D) the Botanic Garden;
- (E) the Government Printing Office;
- (F) the Office of the Architect of the Capitol; and
- (G) the government of the District of Columbia;

but does not include—

- (i) a Government controlled corporation;
- (ii) the Tennessee Valley Authority;
- (iii) The Alaska Railroad;
- (iv) the Virgin Islands Corporation;
- (v) the Atomic Energy Commission;
- (vi) the Central Intelligence Agency;
- (vii) the Panama Canal Company; or
- (viii) the National Security Agency, Department of Defense;

* * * * *

(25) positions for which rates of basic pay are individually fixed, or expressly authorized to be fixed, by a statute other than this chapter, at or in excess of the maximum rate for GS-15;

* * * * *

§ 5104. Basis for grading positions

The General Schedule, the symbol for which is “GS”, is the basic pay schedule for positions to which this chapter applies. The General Schedule is divided into [18] 15 grades of difficulty and responsibility of work as follows:

* * * * *

[(16) Grade GS-16 includes those classes of positions the duties of which are—

(A) to perform, under general administrative direction, with unusual latitude for the exercise of independent judgment, work of outstanding difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and exceptional attainments;

(B) to serve as head of a major organization within a bureau involving work of comparable level;

(C) to plan and direct or to plan and execute professional, scientific, technical, administrative, fiscal, and other specialized programs of unusual difficulty, responsibility, and national significance, requiring extended training and experience which has demonstrated leadership and exceptional attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(17) Grade GS-17 includes those classes of positions the duties of which are—

(A) to serve as the head of a bureau where the position, considering the kind and extent of the authorities and responsibilities vested in it, and the scope, complexity, and degree of difficulty of the activities carried on, is of a high order among the whole group of positions of heads of bureaus;

(B) to plan and direct or to plan and execute professional, scientific, technical, administrative, fiscal, or other specialized programs of exceptional difficulty, responsibility, and national significance, requiring extended training and experience which has demonstrated exceptional leadership and attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(C) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty and responsibility, and requiring comparable qualifications.

(18) Grade GS-18 includes those classes of positions the duties of which are—

(A) to serve as the head of a bureau where the position, considering the kind and extent of the authorities and responsibilities vested in it, and the scope, complexity, and degree of difficulty of the activities carried on, is exceptional and outstanding among the whole group of positions of heads of bureaus;

(B) to plan and direct or to plan and execute frontier or unprecedented professional, scientific, technical, administrative, fiscal, or other specialized programs of outstanding difficulty, responsibility, and national significance, requiring extended training and experience which has demonstrated outstanding leadership and attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(C) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.]

[§ 5108. Classification of positions at GS-16, 17, and 18

(a) A majority of the Civil Service Commissioners may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of 2,754, in addition to any professional engineering positions primarily concerned with research and development and professional positions in the physical and natural sciences and medicine which may be placed in these grades, and in addition to 240 hearing examiner positions under section 3105 of this title which may be placed in GS-16 and 9 such positions which may be placed in GS-17) which may be placed in GS-16, 17, and 18 at any

one time. However, under this authority, not to exceed 25 percent of the aggregate number may be placed in GS-17 and not to exceed 12 percent of the aggregate number may be placed in GS-18. A position may be placed in GS-16, 17, or 18 only by action of, or after prior approval, by a majority of the Civil Service Commissioners.

(b)(1) The number of positions of senior specialists in the Legislative Reference Service, Library of Congress, placed in GS-16, 17, and 18 under the proviso in section 166(b)(1) of title 2 are in addition to the number of positions authorized by subsection (a) of this section.

(2) In addition to the number of positions authorized by subsection (a) of this section and positions referred to in paragraph (1) of this subsection, the Librarian of Congress, subject to the procedures prescribed by this section, may place a total of 44 positions in the Library of Congress in GS-16, 17, and 18.

(c) In addition to the number of positions authorized by subsection (a) of this section--

(1) the Comptroller General of the United States, subject to the procedures prescribed by this section, may place a total of 90 positions in the General Accounting Office in GS-16, 17, and 18;

(2) the Director of the Federal Bureau of Investigation, without regard to any other provision of this section, may place a total of 140 positions in the Federal Bureau of Investigation in GS-16, 17, and 18;

(3) the Director of the Administrative Office of the United States Courts may place a total of 4 positions in GS-17;

(4) the Commissioner of Immigration and Naturalization may place a total of 11 positions in GS-17;

(5) the Secretary of Defense, subject to the standards and procedures prescribed by this chapter, may place a total of 407 positions (in addition to any professional engineering positions primarily concerned with research and development and professional positions in the physical and natural sciences and medicine which may be placed in these grades) in the Department of Defense in GS-16, 17, and 18;

(6) the Administrator of the National Aeronautics and Space Administration, subject to the standards and procedures prescribed by this chapter, may place a total of 5 positions in the National Aeronautics and Space Administration in GS-16, 17, and 18;

(7) the Attorney General, without regard to any other provision of this section, may place a total of--

(A) 10 positions of Warden in the Bureau of Prisons in GS-16; and

(B) 8 positions of Members of the Board of Parole in GS-17;

(8) the Attorney General, without regard to this chapter (except section 5114), may place 1 position in GS-16;

(9) the Railroad Retirement Board may place 4 positions in GS-16, 4 in GS-17, and 1 in GS-18, for the purpose of its administration of chapter 9 or 11 of title 45, or both; and

(10)(A) the Secretary of Labor, subject to the standards and procedures prescribed by this chapter, may place an additional twenty-five positions in the Department of Labor in GS-16, 17, and 18 for the purposes of carrying out his responsibilities under the Occupational Safety and Health Act of 1970;

(B) the Occupational Safety and Health Review Commission, subject to the standards and procedures prescribed by this chapter, may place ten positions in GS-16, 17, and 18 in carrying out its functions under the Occupational Safety and Health Act of 1970.

(10) the Law Enforcement Assistance Administration may place a total of twenty positions in GS-16, 17, and 18.

(10) the Chief Judge of the United States Tax Court, without regard to this chapter (except section 5114), may place a total of 5 positions in GS-16, 17, and 18.

(d) When a general appropriation statute authorizes an agency to place additional positions in GS-16, 17, and 18, the total number of positions authorized to be placed in these grades by this section (except subsection (c) (8) and (9)) is reduced by the number of positions authorized by the appropriation statute, unless otherwise specifically provided. The reduction is made in the following order—

first, from any number specifically authorized for the agency by this section (except subsection (c) (8) and (9)); and

second, from the maximum number of positions authorized by subsection (a) of this section irrespective of the agency to which the positions are allocated.】

§ 5109. Positions classified by statute

【(a)】 The position held by an employee of the Department of Agriculture while he, under section 450d of title 7, is designated and vested with a delegated regulatory function or part thereof shall be classified in accordance with this chapter, but not lower than GS-14.

【(b)】 The position held by the employee appointed under section 1104(a) (2) of this title to have such functions and duties with respect to retirement, life insurance, and health benefits programs as the Civil Service Commission may prescribe is classified at GS-18, and is in addition to the number of positions authorized by section 5108(a) of this title.】

(c) Repealed. Pub. L. 91-34, §2(b), June 30, 1969, 83 Stat. 41. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 455, amended Pub. L. 91-34, §2(b), June 30, 1969, 83 Stat. 41.)

* * * * *

【§ 5114. Reports; positions in GS-16, 17, and 18

(a) The Civil Service Commission, with respect to positions under section 5108(a) of this title, the head of the agency concerned, with respect to positions under sections 5108 (b), (c) and 5109(b) of this title, and the appropriate authority, with respect to positions under jurisdiction of the authority which are allocated to or placed in GS-16, 17, and 18, including positions so allocated or placed on a temporary or present incumbency basis, under reorganization plan or statute, except sections 5108 and 5109 of this title, shall submit, so

long as the reorganization plan or statute remains in effect, to Congress, not later than February 1 of each year, a report setting forth—

(1) the total number of positions allocated to or placed in all these grades during the immediately preceding calendar year, the total number of positions allocated to or placed in each of these grades during the immediately preceding calendar year, and the total number of these positions in existence during the immediately preceding calendar year and the grades to or in which the total number of positions in existence are allocated or placed;

(2) the name, rate of pay, and description of the qualifications of the incumbent of each of these positions, together with the position title and a statement of the duties and responsibilities performed by the incumbent;

(3) the position or positions in or outside the Government of the United States held by each of these incumbents, and his rate or rates of pay, during the 5-year period immediately preceding the date of his appointment to the position; and

(4) such other information as the Commission, the head of the agency, or other appropriate authority submitting the report may consider appropriate or as may be required by Congress or a committee thereof.

This subsection does not require the resubmission of information required by paragraphs (2) and (3) of this subsection which has been reported under this subsection and which remains unchanged.

(b) When the Commission, the head of the agency, or other appropriate authority considers full public disclosure of any or all of the items specified by subsection (a) of this section to be detrimental to the national security, the Commission, the head of the agency, or authority may—

(1) omit from the annual report those items with respect to which full public disclosure is found to be detrimental to the national security;

(2) inform Congress of the omission; and

(3) at the request of the Congressional committee to which the report is referred, present all information concerning those items.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 456).】

§ 5115. Regulations

The Civil Service Commission may prescribe regulations necessary for the administration of this chapter, except [sections 5109 and 5114.] section 5109. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 457.)

CHAPTER 53—PAY RATES AND SYSTEMS

SUBCHAPTER I—PAY COMPARABILITY SYSTEM

Sec.
5301. Policy

* * * * *

SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

Sec.

[5361. Scientific and professional positions.]

5362. Hearing examiners.

5363. Limitation on pay fixed by administrative action.

5364. Miscellaneous positions in the executive branch.

5365. Police force of National Zoological Park.

* * * * *

§ 5304. Presidential policies and regulations

The functions, duties, and regulations of the agencies and the Civil Service Commission with respect to this subchapter, subchapter III of this chapter [chapter 51 of this title] *chapter 51 and subchapter II of chapter 31 of this title* chapter 14 of title 22, and the provisions of chapter 73 of title 38 relating to employees in the Department of Medicine and Surgery, Veterans' Administration, are subject to such policies and regulations as the President may prescribe. Among other things, the policies and regulations of the President may provide for—

(1) preparing and reporting to him the annual comparison of Federal pay rates with private enterprise rates;

(2) obtaining and reporting to him the views of employee organizations on the annual comparison, and on other pay matters;

(3) reviewing and reporting to him on the adequacy of the Federal statutory pay structures for the Federal programs to which they apply;

(4) reviewing the relationship of Federal statutory pay rates and private enterprise pay rates in specific occupation and local areas; and

(5) providing step-increases in recognition of high quality performance and providing for properly relating supervisory pay rates paid under one system to those of subordinates paid under another system.

* * * * *

§ 5332. The General Schedule

(a) The General Schedule, the symbol for which is "GS", is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this subchapter applies is entitled to basic pay in accordance with the General Schedule.

GENERAL SCHEDULE

Grade	Annual rates and steps									
	1	2	3	4	5	6	7	8	9	10
GS-1.....	\$4,564	\$4,716	\$4,868	\$5,020	\$5,172	\$5,324	\$5,476	\$5,628	\$5,780	\$5,932
GS-2.....	5,166	5,338	5,510	5,682	5,854	6,026	6,198	6,370	6,542	6,714
GS-3.....	5,828	6,022	6,216	6,410	6,604	6,798	6,992	7,186	7,380	7,574
GS-4.....	6,544	6,762	6,980	7,198	7,416	7,634	7,852	8,070	8,288	8,506
GS-5.....	7,319	7,563	7,807	8,051	8,295	8,539	8,783	9,027	9,271	9,515
GS-6.....	8,153	8,425	8,697	8,969	9,241	9,513	9,785	10,057	10,329	10,601
GS-7.....	9,053	9,355	9,657	9,959	10,261	10,563	10,865	11,167	11,469	11,771
GS-8.....	10,013	10,347	10,681	11,015	11,349	11,683	12,017	12,351	12,685	13,019
GS-9.....	11,046	11,414	11,782	12,150	12,518	12,886	13,254	13,622	13,990	14,358
GS-10.....	12,151	12,556	12,961	13,366	13,771	14,176	14,581	14,986	15,391	15,796
GS-11.....	13,309	13,753	14,197	14,641	15,085	15,529	15,973	16,417	16,861	17,305
GS-12.....	15,866	16,395	16,924	17,453	17,982	18,511	19,040	19,569	20,098	20,627
GS-13.....	18,737	19,362	19,987	20,612	21,237	21,862	22,487	23,112	23,737	24,362
GS-14.....	21,960	22,692	23,424	24,156	24,888	25,620	26,352	27,084	27,816	28,548
GS-15.....	25,583	26,436	27,289	28,142	28,995	29,848	30,701	31,554	32,407	33,260
GS-16.....	29,678	30,667	31,656	32,645	33,634	34,623	35,612	36,601	37,590	38,579
GS-17.....	34,335	35,480	36,625	37,770	38,915					
GS-18.....	39,693									

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SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

§ 5361. Scientific and professional positions

Subject to the approval of the Civil Service Commission, the head of the agency concerned shall fix the annual rate of basic pay for scientific and professional positions established under section 3104 of this title at not less than the minimum rate for GS-16 nor more than the maximum rate for GS-18. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473.)

§ 5362. Hearing examiners

Hearing examiners appointed under section 3105 of this title to positions paid under the General Schedule in section 5332 of this title are entitled to pay prescribed by the Civil Service Commission independently of agency recommendations or ratings and in accordance with subchapter III of this chapter and chapter 51 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473.)

§ 5363. Limitation on pay fixed by administrative action

Except as provided by the Government Employees Salary Reform Act of 1964 (78 Stat. 400) and notwithstanding the provisions of other statutes, the head of an Executive agency or military department who is authorized to fix by administrative action the annual rate of basic pay for a position or employee may not fix the rate at more than the maximum rate [for GS-18] that may be paid under section 3139 of this title. This section does not impair the authorities provided by—

- (1) section 121 of title 2, Canal Zone Code (76A Stat. 15);
- (2) sections 248, 481, and 1819 of title 12;
- (3) section 831b of title 16; or
- (4) sections 403a-403c, 403e-403h, and 403j of title 50.

§ 5364. Miscellaneous positions in the executive branch

The head of the agency concerned shall fix the annual rate of basic pay for each position in the executive branch specifically referred to in, or covered by, a conforming change in statute made by section 305 of the Government Employees Salary Reform Act of 1964 (78 Stat. 422), or other position in the executive branch for which the annual pay is fixed at a rate of \$18,500 or more under special provision of statute enacted before August 14, 1964, which is not placed in a level of the Executive Schedule set forth in subchapter II of this chapter, at a rate [equal to the pay rate of a grade and step of the General Schedule set forth in section 5332 of this title] that is not more than the maximum rate that may be paid under section 3139 of this title. The head of the agency concerned shall report each action taken under this section to the Civil Service Commission and publish a notice thereof in the Federal Register, except when the President determines that the report and publication would be contrary to the interest of national security.

§ 5595. Severance pay

(a) For the purpose of this section—

(1) “agency” means—

- (A) an Executive agency;
- (B) the Library of Congress;
- (C) the Government Printing Office; and
- (D) the government of the District of Columbia; and

(2) “employee” means—

- (A) an individual employed in or under an agency; and
- (B) an individual employed by a county committee established under section 590h(b) of title 16;

but does not include—

(i) an employee whose rate of basic pay is fixed at a rate provided for one of the levels of the Executive Schedule or is in excess of the maximum rate [for GS-18] *that may be paid under section 3139 of this title.*

(ii) an employee serving under an appointment with a definite time limitation, except one so appointed for full-time employment without a break in service of more than 3 days following service under an appointment without time limitation [.] or a member of the Federal Executive Service.

(iii) an alien employee who occupies a position outside the several States, the District of Columbia, and the Canal Zone;

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§ 7154. Other prohibitions

(a) Repealed. Pub. L. 90-83, § 1(44), Sept. 11, 1967, 81 Stat. 208.

(b) In the administration of [chapter 51, subchapter III of chapter 53,] *subchapter II of chapter 31* and [sections 305 and 3324] *section 305* of this title, discrimination because of race, color, creed, sex, or marital status is prohibited with respect to an individual or a position held by an individual.

(c) The Civil Service Commission may prescribe regulations necessary for the administration of subsection (b) of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 523, amended Pub. L. 90-83, § 1(44), Sept. 11, 1967, 81 Stat. 208.)

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